IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11837 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MAYURSINH JAGDISHSINH JHALA (DAIYA)

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 11837 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 09/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabd City, on 18th August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 18th August, 2004 in pursuance of the above order.

2. The grounds of detentions as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration two criminal cases registered against the petitioner under Section 379 of the Indian Penal Code for theft of vehicles and secondly, the detaining authority took into consideration two incamera statements of the witnesses whose identity is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act. These statements came to be recorded by the sponsoring authority on 12th August, 2004 and verified by the detaining authority on 16th August, 2004.

3. Two criminal cases, one before Ghatlodia Police Station on 2nd December, 2003 and second before Shahibaugh Police Station on 3rd February, 2004 came to be registered against the petitioner for theft of Toyota Quolis Car in both the cases. The petitioner came to be arrested on 13th July, 2004 and 14th July, 2004 in those cases and was released on bail. The detaining authority considered exhaustively and thoroughly investigation papers in both the cases registered against the petitioner. The detaining authority came to the conclusion that the petitioner was a habitual offender within the meaning of PASA Act because he was involved in committing offences of theft of vehicles.

4. The detaining authority also considered two incamera statements. First witness referred to the incident occurred on 5th June, 2004, on that day about 6.00 P.M., the witness was standing near Chandlodia Overbridge at that time, the petitioner approached him and started abusing the witness. The petitioner stated that the witness knew the activities of the petitioner of stealing vehicles and the witness was providing that information to the police. The witness denied to have give any information to the police. Thereupon, the petitioner was excited and caught hold the witness and started beating him, to save from beating the witness shouted so residents and traders of nearby area and

passerby gathered near the place of incident. Thereafter, the petitioner took out rampuri knife and show to the witness and threaten the witness was frighten, the petitioner started abusing the persons gathered near the place and rushed towards them with open rampuri knife so the people started running helter-skelter. The traffic was disrupted and the terror was spread. Second witness referred to the incident occurred on 24th February, 2004 at about 13.00 hours, the witness was present at the place of his business. The petitioner and one of his accomplices approached the witness in one Qualis Car. The petitioner stated to the witness that he was in need of money and the witness should purchase the Qualis Car which he had driven to the witness in Rs.2,00,000-00. The witness knew that the petitioner was committing theft of vehicles and, therefore, he denied to give money or to purchase the said Qualis Car. Thereupon, the petitioner got excited and started abusing the witness and the petitioner and his accomplices dragged the witness from his business place and carried him near cross road of Ghatlodia Bhuyangdev. There also the witness was beaten by the petitioner and his accomplices by fists and kicks, the traders of nearby area and other passerby gathered there to the place of incident. Thereupon the petitioner and his accomplices took out knife and show it to the witness and threaten the witness to kill, the witness was frighten and thereafter, the petitioner and his accomplices started giving abuses to the persons gathered there and rushed towards them with open knife, the people, therefore, in fright starting running helter-skelter, the traffic on the road was disturbed and terror was spread in the area. The normal life of the persons residing there was disturbed.

5. From the above materials, the detaining authority came to the conclusion that the petitioner was not only engaged in committing the crime of thefts, but through illegal activities creates feeling insecurity among the general public. The detaining authority came to the conclusion that the petitioner and his accomplices were in habit of harassing innocent citizens and on account of fear of the petitioner, nobody dared to file any complaint against the petitioner. In view of the detaining authority, the dangerous activities of the petitioner were prejudicial to the maintenance of public order. The detaining authority came to the conclusion that illegal and anti social activities of the petitioner were required to be prevented forthwith. After considering the remedies available against the petitioner in general law, the detaining authority came to the

conclusion that there was no other alternative, except to detain the petitioner under the PASA Act. The detaining authority, therefore, passed an order of detention of the petitioner, which is under challenge in this petition.

6. Learned advocate Mr.M.R.Prajapati for the petitioner and learned AGP Mr.H.M.Prachchhak for the respondent No.3 were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by the learned AGP is taken into consideration.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by activities of the petitioner, the public order was disturbed.

8. To reach to the subjective satisfaction that dangerous activities of the petitioner were prejudicial to the maintenance of the public order, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category and breach of law and order and the cases falling within the category of breach of public order.

9. Referring to two criminal cases filed against the petitioner for committing theft of vehicles and going through the investigation papers as placed on record, it is found that those two cases came to be filed against the detenu because he alleged to have stolen vehicles. The theft is an offence under the penal statue of the country. However, merely filing cases for theft would not be result into conclusion that the activities of the petitioner were disturbing the public order. Those cases are pending and the petitioner will be tried according to law and may be punish, if found guilty. But surely, the act constituting the offences as revealed from the investigating papers, have no bearing at all to the question of maintenance of public order. At the most, the activities reveal through the investigating papers may be said to be breach of the provisions of law for

which as aforesaid general law may take care of the situation. Therefore, the activities reveal to the investigating papers in both the criminal cases, cannot be said to have affected the even tempo of the life of the community nor the activities revealed through the investigating papers indicate that such activities of the petitioner, society at large or section of the society or community was involved. These cases may be instances of breach of law and order, but cannot be branded as activities disturbing the public order. While referring to the incamera statements relied upon by the detaining authority, it must be borne in mine by the detaining authority, while reaching to the subjective satisfaction about the alleged activities of the petitioner must consider the fall out, reach and impact of the alleged activities of the petitioner. It would be necessary for the detaining authority to judge the potentiality of the activities alleged as to whether such activities were capable of disturbing the public order as to involve society at large. Two incidents as narrated through incamera statements, on going through carefully reveal individual disputes then to involve society at large or disturbing the even tempo of the life of the community. The potentiality of the act alleged through incamera statements, even the barred reading of them are not capable to be branded as the activities disturbing the even tempo of life of community or society at large or section of the society. No widespread danger or harm to the society could be inferred from the statements of the witnesses. The phraseology employed by the witnesses in their statements or employed by the detaining authority in reasoning for the detention would not stretch a case to the extent of branding and activities to be the activities disturbing the public order. Therefore, even after taking the statement on their face value, it clearly appears that those incidents may be instances of disturbing the law and order which could be taken care of by general law, but by no stretch of reasoning such activities can be branded to disturb the public order.

10. In the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393, wherein after considering many decisions of the Apex Court, the Division Bench of this Court has observed in paragraphs No.20 and 21 as under.

"20. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T. Devaki v. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar

circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly, in T. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was high lighted. It was also alleged that people were scared and had run helter skelter. In spite of such allegations the Supreme Court held that they were not cases of maintenance of public order and hence, an action of preventive detention was uncalled for.

"21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases.

11. The present set of facts are squarely covered by the above decision of this Court in the matter of Ashokbhai Jivraj @ Jivabhai Solanki [supra] and, therefore, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner, cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

12. In the result, in view of the above discussion, the petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 18th August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The detenu Mayursinh Jagdishsinh Jhala (Daiya) is hereby ordered to be set at liberty forthwith, if he is

not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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